



June 15, 2001

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2001-2558

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148480.

The City of McAllen (the "city") received a request for reports, notes, memoranda, and other information relating to a traffic accident and the city police department's investigation of the accident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information may be withheld from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request [for information]." Section 552.301(e)(1)(D) provides that "[a] governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]" Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

The copy of the request for information that you submitted to this office reflects that the city received the request on March 22, 2001. Thus, the city had until and including April 5 to ask for this decision and until and including April 11 to submit the requested information, or representative samples of the information, that the city claims is excepted from disclosure. The city's request for this decision was mailed to this office on April 9. As of the date of this

decision, the city had not submitted either the requested information or representative samples. Thus, the city failed to comply with section 552.301. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from public disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The city does not demonstrate a compelling reason to withhold the requested information under section 552.108. *See Open Records Decision No. 586 at 3 (1991)* (stating that the need of a governmental body, other than the one that failed to timely seek a decision, may provide a compelling reason for non-disclosure under statutory predecessor to section 552.108). In the absence of the requested information, we are unable to determine whether any other compelling reason exists to withhold the information from the public. *See Open Records Decision No. 630 at 3 (1994)* (stating that as a general rule the presumption that information is public under section 552.302 can be overcome by a demonstration that the information is confidential under other law or that third-party interests are at stake). Therefore, the requested information must be released in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 148480

c: Mr. David McGee
3827 N. 10th St.
Suite 302A, Plaza 10 Building
McAllen, Texas 78501